

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

SHAWN JOSEPH SILVER,

Defendant-Appellant.

UNPUBLISHED

February 22, 2000

No. 214391

St. Clair Circuit Court

LC No. 98-000989-FH

Before: O'Connell, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right from his jury-trial conviction of receiving stolen property with a value over \$100, MCL 750.535(1); MSA 28.803(1). Defendant was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to ten to twenty years' imprisonment. We affirm.

First, defendant argues that the trial court erred by allowing the prosecutor to impeach his credibility with evidence of a prior conviction. We review the trial court's decision to allow impeachment by evidence of a prior conviction for an abuse of discretion. *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995). We find no abuse of discretion in this case.

MRE 609(a) governs the admissibility of a witness' prior convictions for impeachment purposes, and provides as follows:

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross examination, and

(1) the crime contained an element of dishonesty or false statement, or

(2) the crime contained an element of theft, and

(A) the crime was punishable by imprisonment in excess of one year or

death under the law under which the witness was convicted, and

(B) the court determines that the evidence has significant probative value on the issue of credibility and, if the witness is the defendant in a criminal trial, the court further determines that the probative value of the evidence outweighs its prejudicial effect.

In this case, the prosecutor sought to impeach defendant's credibility with evidence of defendant's May 1998 conviction of first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2). Because first-degree home invasion contains an element of theft or larceny, and is punishable by up to twenty years' imprisonment under MCL 750.110a(4); MSA 28.305(a)(4), it could be admitted to impeach defendant's credibility under MRE 609(a)(2) if its probative value on the issue of his credibility outweighed its prejudicial effect. In determining the probative value of evidence of a prior conviction, the trial court must "consider only the age of the conviction and the degree to which of conviction of the crime is indicative of veracity." MRE 609(b). In determining the prejudicial effect, the trial court must consider only the conviction's similarity to the charged offense and whether admission of the evidence would affect defendant's decision whether to testify. *Id.*

The trial court correctly concluded that this conviction was probative of defendant's veracity. See *People v Allen*, 429 Mich 558, 595; 420 NW2d 499, amended sub nom *People v Pedrin*, 429 Mich 1216 (1988). Also, the more recent a conviction is, the greater its probative value. *Id.* at 611. Although the court did not specifically analyze the prejudicial effect of the prior conviction, we conclude that, "[h]ad the trial court articulated its analysis on the record, we would find no abuse of discretion." *People v Daniels*, 192 Mich App 658, 671; 482 NW2d 176 (1991). The home-invasion conviction was not very similar to defendant's pending charge of receiving stolen property with a value over \$100. Although there would have been a substantial effect on defendant's decision whether to testify, we conclude that the trial court did not abuse its discretion in determining that the probative value of this very recent conviction outweighed its prejudicial effect.

Next, defendant argues that the trial court abused its discretion by imposing a ten- to twenty-year sentence on him as a fourth habitual offender in light of his underlying offense. We review a sentence imposed on an habitual offender for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). A sentence within the statutory limits does not constitute an abuse of discretion when the habitual offender's underlying felony, in the context of his or her criminal history, demonstrates that the offender is unable to conform his or her conduct to the law. *Id.* at 326. In this case, the trial court's conclusion that defendant is resistant to reform and unable to conform his conduct to the law is supported by the record. Unchallenged portions of the presentence investigation report (PSIR) indicate numerous convictions for felonies and misdemeanors and an extensive juvenile record. The sentence imposed was within the statutory maximum for the charged offense—life imprisonment for a fourth habitual offender. See MCL 769.12(1)(a); MSA 28.1084(1)(a). We conclude that the trial court did not abuse its discretion by imposing the sentence.

Finally, defendant argues that the trial judge erred by refusing to amend defendant's PSIR after agreeing to not consider two listed felony convictions that defendant disputed. "A judge is entitled to

rely on the information in the presentence report, which is presumed to be accurate unless the defendant effectively challenges the accuracy of the factual information.” *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997). At sentencing, defendant claimed that the PSIR incorrectly indicated that he was convicted in Florida of possession of a firearm by a felon in November 1986 and of disorderly conduct and resisting an officer in August 1989.

MCR 6.425(D)(3) provides that, where information in the PSIR is challenged, the sentencing court must determine whether the challenge has merit, or the court may instead decide to not consider the challenged information in imposing a sentence. If the court decides to not consider the information, it must direct that the information be corrected or deleted and allow the defendant’s attorney to review the corrected PSIR before it is sent to the Department of Corrections. MCR 6.425(D)(3). In this case, the court stated that it would not consider the challenged information in sentencing defendant. Therefore, defendant argues that the court should have ordered the correction or deletion of the information. However, the court also found that the challenge was without merit. Defendant does not contend that the court’s finding was clearly erroneous; therefore, we will not disturb it on appeal. *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997).

Affirmed.

/s/ Peter D. O’Connell

/s/ William B. Murphy

/s/ Kathleen Jansen